



Public Health Division
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July 17, 1996

TO : Les Morris, Acting Director
Legislation and Regulations

FROM : Barbara Hudson
Office of the General Counsel

SUBJECT : Request for Legal Opinion Regarding Eligibility for the Self-Governance
Demonstration Negotiation Cooperative Agreement Program

This memorandum is in response to your request for legal opinion dated July 9, 1996. According to the information which accompanied your request, the Grand Traverse Band of Ottawa and Chippewa Indians has applied for a self-governance demonstration negotiation cooperative agreement on behalf of the Northern Lower Michigan Tribal Health Consortium. Apparently, the Consortium consists of three tribes: Grand Traverse Band of Ottawa and Chippewa Indians, Little River Band of Ottawa Indians, and Little Traverse Bay Bands of Odawa Indians.

The application by Grand Traverse raises lots of questions.

1. Has the Consortium authorized Grand Traverse to apply for a cooperative agreement on its behalf? Is the Consortium eligible to receive funds pursuant to the Indian Self Determination Act (ISDA)?

First, ISDA authorizes cooperative agreements to tribes and tribal organizations. There is not sufficient information to determine if the Consortium is eligible to receive funds under ISDA. The Consortium must be eligible to receive funds pursuant to ISDA before it may authorize another entity, i.e., Grand Traverse, to receive funds to which it is otherwise entitled.

Second, Grand Traverse, not the Consortium, is the legal applicant. Therefore, the role of the Consortium is unclear to me.

2. Is Grand Traverse eligible for a negotiation cooperative agreement?

The ISDA anticipates a progression from a Title I contract to a Title III compact. Initially, a tribe successfully operates a self determination contract for a period of at least three years. Subsequently, the tribe applies for and receives a negotiation cooperative agreement. Finally, the tribe requests to participate in the Title III Self Governance Demonstration Project. Grand Traverse already has completed this progress and currently participates in the Title III Self Governance Demonstration Project. Therefore, it is not eligible for a negotiation cooperative agreement.

3. Is Grand Traverse eligible as a tribal organization representing Little River Band of Ottawa Indians and Little Traverse Bay Bands?

Section 4(l) does anticipate the situation where one tribe may provide services benefiting more than one tribe. However, we must inquire whether the two tribes which Grand Traverse would be representing qualify for Title III. Prior to 1994, these tribes did not meet the statutory definition of tribe as set forth in ISDA. Both the Little River Band of Ottawa and the Little Traverse Bay Bands became Federally recognized tribes in 1994.

In order to participate in the Title III Self Governance Demonstration Project, a tribe, at a minimum, must have operated a self determination contract for a period of not less than three years. (Section 302(a)(2).) Neither the Little River Band nor the Little Traverse Bay Bands could have operated a self determination contract for significant time to qualify for participating in Title III. Therefore, at this point in time, neither of these tribes would be eligible to participate in Title III. It follows that neither would be eligible to receive a negotiation cooperative agreement which anticipates eligibility for Title III participation. Finally, If nether of these tribes is eligible, then the Grand Traverse tribal organization would be ineligible to apply on their behalf.

Because the application raises so many questions, I would suggest that the parties involved talk with the Area Office about how to structure their health delivery system to address their goals and vision. If I can be of further assistance, please give me a call at 301-443-0406.



Barbara Hudson

cc: Kay Carpentier
Phyllis Wolfe
Division of Acquisition and Grants Operations

Marv Edevold
Bemidji Area Office